

Cozen O'Connor Lawyers Win Appeal Defeating Northwestern Football Players' Attempt to Form Union

The National Labor Relations Board announced on August 17, 2015 that it would not assert jurisdiction over Northwestern University's scholarship football student-athletes in their bid to be recognized as "employees" and form a union under the National Labor Relations Act. This resounding victory for Northwestern was orchestrated by a team of Cozen O'Connor lawyers, led by Joe Tilson, Alex Barbour, Anna Wermuth, Jeremy Glenn and Sepideh Smith, who worked closely with in-house University counsel in handling this unprecedented matter from the opening trial before the Regional Office, through the ensuing election, and the successful appeal. In dismissing the petition for election, the Board overturned a 2014 decision by Chicago's Regional Director, Peter Ohr, finding that the scholarship football student-athletes were employees under the Act and entitled to vote in a union election. The initial petition garnered national media attention and the appeal to the Board was accompanied by more than 20 briefs from interested groups, including the NCAA, the Big Ten, Ivy League and other private schools, professional sports leagues players' associations, and elected members of Congress.

The Board, which is exclusively composed of President Obama appointees, concluded in a unanimous 5-0 decision that it would not "effectuate the policies of the Act" to assert jurisdiction over the scholarship football student-athletes enrolled at Northwestern University. The Board noted this case involved novel and unique circumstances as it had never before confronted a case involving college football players, or college student-athletes of any kind, or an effort to organize a single athletic team, as opposed to a league of teams. Though careful to limit its decision to the facts, the Board adopted a number of public policy arguments stressed by Cozen O'Connor attorneys throughout the process that, given the nature of collegiate sports leagues, which are regulated by the NCAA and conferences, and the composition and structure of Division 1 Football Bowl Subdivision (FBS) football, in which the overwhelming majority of competitors are public colleges and universities over which the Board cannot assert jurisdiction, it would not promote stability in labor relations to assert jurisdiction in this case.

In holding that it would not assert jurisdiction, the Board ultimately dodged the question of whether scholarship football student-athletes are "employees" under the Act. Importantly, though, the Board distinguished football players from other types of students or athletes, saying "the scholarship players bear little resemblance to the graduate student assistants or student janitors and cafeteria workers whose employee status the Board has considered in other cases."

The Board also distinguished college athletes from professional players, noting that all previous Board cases concerning professional sports involve league-wide bargaining units. The Board pointed out that, of the roughly 125 colleges and universities that participate in FBS football, all but 17 are state-run institutions. As a result, the Board cannot assert jurisdiction over the vast majority of FBS teams because they are not operated by "employers" within the meaning of the Act. Asserting jurisdiction in this case would not promote stability in labor relations, ruled the Board, because most FBS teams are created by state institutions, and are subject to widely varying state labor laws governing public employees.

Because the union petition for election was dismissed, the votes cast in an NLRB election conducted in April 2014 will not be opened. The Board's decision in this case is final and not subject to appellate review so an appeal of the decision by the union is highly unlikely. Only time will tell if the effort to unionize college student-athletes will find a toe-hold in another sport or institution, but if that happens the strong public policy arguments articulated by the Cozen O'Connor team and adopted by the Board will remain a significant obstacle to the unionization of college student-athletes.



Jeremy J. Glenn

Member

jglenn@cozen.com
Phone: (312) 474-7981
Fax: (312) 706-9791

Related Practice Areas

- Labor & Employment

Industry Sectors

- Sports

Cozen O'Connor's Labor & Employment attorneys are available to provide counsel and guidance on the issues discussed in this Alert.